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August 3, 1984

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Mr. Murray L. McKay
Pesticide Control Supervisor
Pesticide Control Division
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RE: INTERPRETATION OF THE APPLICABILITY OF PESTICIDE
RULE 502.02 TO PRIVATE APPLICATORS

Dear Mr. McKay:

This letter is in response to your memorandum of June 16, 1983, regarding the applicability of Pesticide Control Board rule Pes 502.02, "Copy of Label at Site," to private applicators. Our conclusion is that Pes 502.02, as it currently reads, is applicable to both commercial and private applicators.

Pes 502.02, "Copy of Label at Site," states that "[f]ull pesticide labeling copy as it appears on the original registered product, shall accompany all service containers and pesticide application equipment in the vehicle transporting them." CHAPTER Pes 500 is entitled "Restrictions on the Application of Pesticides by Commercial Applicator and Permittees." It is a firmly established general principal of law that the title of an act or a subsection of an act is significant in interpreting the meaning and scope of the act, especially where there are ambiguities in the language of that act. Bourne v. Sullivan, 104 NH 348, 186 A. 2d 834, 837 (1962); Algonquin Gas Transmission Co. v. Zoning Bd. of App., 162 Conn. 50, 291 A. 2d 204, 207 (1971); and Mass Transit Admin. v. Baltimore County Rev. Auth., 267 Md. 687, 298 A. 2d 413, 418 (1973). It is clear then that Pes 502.02 is intended to apply



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to both commercial applicators and permittees. The question then becomes, are private applicators permittees?

RSA 149-D:4 II, "Registration Certificates and Permits," states that "[n]o person, other than a commercial applicator, shall apply pesticides in this state without first obtaining a written permit from the board. . .". PART Pes 304, "Private Applicator Permits," sets out the standards and procedures to be followed by private applicators in order to receive a permit. Taken together, it is clear that the language of the act and the rules promulgated under it anticipate that private applicators will become permittees. Therefore, it is our conclusion that the restrictions on the applications of pesticides by commercial applicators and permittees set forth in Pes 502.02 apply to all private applicators.

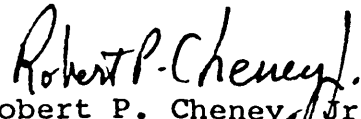
Private applicators are defined in Pes 101.15 as "an individual who uses or supervises the use of any pesticide. . .for purposes of producing any agricultural commodity on property owned or rented by him or his employer. . .on the property of another." This definition is broad enough to include the "farm-type users of pesticides" to which you refer in your memorandum.

It is our opinion that, as the Rules of the Pesticide Control Board currently read, Pes 502.02 applies to both commercial and private applicators. Therefore, all private and commercial applicators are required to carry "full pesticide labeling copy" (as that term is used in 502.02) in the transporting vehicle.

In your memorandum you seemed to express concern that the applicability of Pes 502.02 to private applicators is impractical from the standpoints of the private applicators' ability to comply with and the Division's ability to enforce the rule. If this is indeed the case, the Division should consider recommending to the Pesticide Control Board that this rule be amended.

If you have any further questions, please let me know.

Very truly yours,


Robert P. Cheney, Jr.
Assistant Attorney General
Environmental Protection Division

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